Information
and Privacy
Commissioner/
Ontario

Submission to the Access to Information Review Task Force:

Access to Information Act

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Access to Information Review Task Force
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Re: Access to Information Review Consultation

In response to the Access to Information Review Task Force's consultation paper, the Office of the Information and Privacy Commissioner/Ontario (IPC) would like to take this opportunity to offer our comments. This submission is based on our experience in Ontario as the oversight agency for the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

The introduction of freedom of information laws in Ontario was influenced by similar initiatives in other jurisdictions, and responded to the call for open and accountable government. In 1977, Ontario established the Williams Commission, which, after extensive public consultation, published its recommendations in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*. This Report formed the basis of Ontario's access and privacy laws.

The *Freedom of Information and Protection of Privacy Act* came into effect January 1, 1988. It provides an access and privacy scheme for provincial ministries and most provincial agencies, boards and commissions. The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1,1991, applies to local government organizations such as municipalities, police, and school boards.

In this submission, we have focussed on key access issues which have been at the forefront in Ontario. References below to specific provisions in Ontario's legislation will correspond to the *Freedom of Information and Protection of Privacy Act* (the *Act*) unless otherwise stated. The IPC publications referred to in this submission are available on our Web site.

REDRESS AND POWER OF THE COMMISSIONER

Model of Redress

Ombudsman versus order-making models of complaint or appeal resolution each have their strengths. In Ontario, both *Acts* provide the IPC with the authority to review government access decisions and issue final orders in response to appeals. This model permits a process that is direct, expedient and final. We have experienced a high rate of order compliance with a corresponding low rate of judicial review. For example, 186 final orders were issued in 1999; only 16 judicial review applications were filed.

We recognize that the ombudsman model also has its merits, and there are those who prefer it to other methods of complaint or appeal resolution. The current federal *Access to Information Act* provides the Information Commissioner with broad investigative powers such as the authority to compel the appearance and evidence of persons; the authority to enter government premises; and the right to examine records, to name a few. Whichever model of redress is chosen, we submit that strong powers of inquiry and/or investigation must be provided.

Procedural Complaints/Appeals – Deemed Refusals

We understand that the federal Information Commissioner currently has the power of subpoena to require Ministers and Deputy Ministers to justify deemed refusals. If unsatisfactory explanations are given, recourse is to the Federal Court, which has the authority to order disclosure (*Remarks to Canadian Access and Privacy Association Conference* by John Reid, Information Commissioner of Canada, October 20, 1999).

In order to uphold the letter and spirit of the legislation, it is important that deemed refusals be disposed of directly, expeditiously and in a manner that will result in prompt government compliance. We are of the view that an order-making process may be more effective in these circumstances.

Deemed refusal appeals may be filed with the IPC when a government institution exceeds the statutory time limit for issuing a decision. In conjunction with an expedited processing stream, the IPC has successfully implemented a two-week timeframe for mediation of deemed refusal appeals after which a final order may be issued. Such orders require a government institution to issue a decision letter within a prescribed, usually short, period of time. All such orders are complied with. An appeal or complaint stemming from an institution's decision to extend request processing time is another procedural issue that, in our view, would benefit from an order-making model.

In summary, we believe that if an ombudsman scheme is chosen as the primary model of substantive redress, order-making powers for procedural appeals such as deemed refusals would complement this scheme, and should be considered.

Exercise of Discretion

We also suggest that an oversight body be given the power to review a government institution's exercise of discretion not to disclose a record. The IPC has proposed an amendment to Ontario's *Acts* which would give the Commissioner the authority to review an institution's exercise of discretion where the Commissioner upholds an institution's decision to refuse to disclose a record. This authority would enable the Commissioner to determine whether an institution's discretion has been exercised within proper limits and based on proper principles that are consistent with the intent of the *Acts*. (See: *Suggested Changes to The Freedom of Information and Protection of Privacy Act, as amended: Report for the Standing Committee of the Legislative Assembly*, January 1991).

A federal access scheme would also benefit from such a provision.

Mediation

Ontario's access legislation expressly provides the IPC with the authority to mediate appeals (Section 51).

In 1998, the IPC initiated changes to streamline appeal processing by introducing three stages – intake, mediation and adjudication. A primary objective was to focus on mediation as the preferred method of dispute resolution. Within the mediation stage, three streams were introduced: Regular Mediation (majority of files); Straightforward Appeals, and Reasonable Search Appeals. A description of these streams may be found in the IPC's *Code of Procedure*.

Mediation consists of investigating the circumstances of an appeal with a view to effecting either a full settlement, or the simplification of a file through the reduction of issues or records in dispute. The primary advantages of the IPC's approaches to mediation are:

- "Win-win" settlements for all parties that are not available through the Adjudication stage of the appeal process.
- Better client service as results can be tailored to the parties.
- The provision of more time and resources to encourage mediation of complex cases.

- Generally, a less costly and quicker process than more formal methods of dispute resolution.

The results of a new intake process as well as the emphasis on mediation are very encouraging. In 1999, nearly three-quarters of all appeals (74%) were closed by means other than an order. Of these, five per cent were screened out, 58% were successfully mediated, 30% were withdrawn, six per cent abandoned and one per cent of appeals were dismissed without an inquiry. Of the appeals closed during the mediation stage alone, 88% were successfully resolved. In the end, only 26% of appeals were closed by order, and mediation efforts substantially contributed to this result.

An emphasis on mediation has also been successfully applied to privacy complaints. In addition to processing access appeals, the IPC responds to complaints under the privacy protection measures of the *Acts*. In this context an ombudsman-like model is used where recommendations for remedial action are made to government bodies. Informal resolution is emphasized during this process, resulting in a 49% overall complaint mediation rate in 1999. Of those complaints closed at the mediation stage, approximately 60% were successfully resolved.

In order to obtain feedback on our processes, the IPC recently initiated client surveys. Preliminary results from a survey of provincial and municipal institutions indicate a very high level of agreement with the statement that mediation is an efficient and effective way to resolve both access appeals and privacy complaints.

Based on our experience, it is evident that mediation works well within an order-making and ombudsman model of dispute resolution. We highly recommend mediation as a critical component of any new federal access redress scheme along with a statutory provision that expressly provides for this method of dispute resolution.

Education

One notable omission from the current federal *Act* is an express statutory provision formally enabling the Commissioner to conduct public education activities. The absence of a public education program addressing access rights at the federal level was noted several years ago by the previous Information Commissioner, and articulated in the *Annual Report Information Commissioner 1993-94* as follows:

> Another early victim of government timidity in facing up to the rigors of openness was a public education program which might have better informed the public of its new access rights. This task was to be Treasury Board's. The government decided, however, that this could not be undertaken because the risk was too great. Horror of horrors, the campaign might be successful! More Canadians might use the *Act* to the greater irritation or embarrassment of members of the government.

The IPC has express powers to conduct research, educate the public and receive public representations concerning the operation of Ontario's *Acts* (Sections 59(d)(e) and (f)), and we support the introduction of similar provisions at the federal level.

The IPC conducts an extensive educative function by means of speaking engagements, publications, maintaining a transparent and comprehensive Web site, outreach programs and a school speakers program.

The latter two initiatives have proven to be very successful in spreading the word about access rights. Under the *Reaching Out to Ontario* program, teams from the IPC visit different regions throughout the province for a series of public meetings, media interviews and special presentations. The IPC school program, aimed at Grade 5 and 10 students, introduces concepts of open government and privacy into the curriculum. The response to both of these programs has been very positive, and the guides and teaching materials for the school programs, available on the IPC's Web site, have attracted attention in other jurisdictions.

The IPC is committed to fulfilling an educative function for both the public as well as government, and supports such a role for its federal counterpart.

THE ACCESS PROCESS

Fees

The Ontario *Savings and Restructuring Act, 1996* introduced major changes in the fee structures of the *Acts*. The current fee schedule now requires:

- A $5 fee for each request.
- A $10 fee to file an appeal involving personal information; a $25 appeal fee where general records are at issue.
- Certain fees for personal information requests. Prior to this change, personal information requests were processed without charge to the requester.
- The elimination of 2 hours of free search time. Until 1996, general records requesters were not charged for the first two hours of time spent searching for records.

In the IPC's *1998 Annual Report*, the effects of the amended fee provisions were examined. We learned that the fee increases had a dramatic impact on the public's use of the *Acts*. From 1995 (the year before the new fees were introduced) to 1998, the number of requests made to government declined by 25% and appeals to the IPC declined by 56%.

The *1999 Annual Report* also tabulated the increase in average request costs over the previous four years, showing the dramatic effect of the fee hike. Average charges associated with personal information requests to provincial institutions, for example, more than doubled over that time period along with substantial increases in the average cost of general records requests. A similar impact was experienced at the municipal level.

A detailed analysis of the fee hike and other changes to the *Acts* was conducted by Alasdair Roberts in a working paper entitled *Ontario's Freedom of Information Law: Assessing the Impact of the Harris Government Reforms* dated May 1999. Focussing on provincial institutions, Roberts found that the impact of fee hikes was greatest on the frequency of requests for personal information, which declined 47% between 1994 and 1998. In addition, requests for records relating to internal deliberations about policy and the general management of institutions noticeably declined. Another significant conclusion was that individuals not affiliated with organizations were most affected by the fee hikes, while businesses were least affected.

While the IPC supports the user-pay principle, since the introduction of the fee hike, we have been disturbed by the decline in requests and appeals; the increase in average request costs and the overall impact on individual requesters. We are left to conclude that the increase in fees has frustrated the access rights of Ontario citizens, thereby undermining the purpose of the *Acts*.

The IPC has recommended that the government eliminate appeal fees, eliminate fees for personal information requests and restore two hours of free search time. These recommendations are consistent with the fee schedules of access regimes in British Columbia, Quebec and the current federal access *Act*.

We strongly urge the Task Force to take the effect of the fee increases in Ontario as a clear warning not to embark down this path.

Fee Waiver

Although the federal *Act* provides for fee waivers, there are no grounds specified in the legislation.

Ontario's *Acts* offer various criteria under which a fee waiver may be granted. Specifically, the head of an institution shall waive payment where in his or her opinion, it is fair and equitable to do so after considering the basis of the fee waiver request. The most frequently used grounds are financial hardship and whether dissemination of the record will benefit public health or safety (Section 57(4)). We have found the latter ground at times too restrictive and favour expanding the fee waiver criteria to take into account broader public interest considerations.

We submit that entrenching fee waiver criteria in the *Act* would provide consistency and guidance to both requesters and government institutions.

Frivolous and Vexatious Requests

Prior to 1996, there were no provisions in the *Acts* permitting institutions to refuse to deal with requests on the basis that they were frivolous or vexatious. In 1995, former Commissioner Tom Wright conducted a public inquiry to determine whether a frequent user's requests were frivolous, vexatious or an abuse of process as claimed by a local police board. This inquiry resulted in Order M-618 which set out some useful guidelines for establishing an abuse of process.

At around this time, the IPC implemented an internal "Bulk User" policy in response to one individual who was inundating this Office with appeals, to the detriment of other appellants. The policy permitted the appeals to proceed, but limited the number of active appeal files at any one time.

In 1996, at the same time user fees were increased, an amendment to the *Acts* was introduced permitting institutions to decline processing a request if, in the opinion of the head, it was "frivolous or vexatious" (Section 27.1 of the *Act;* Regulation 460, s.5.1). The impetus for this amendment was the perceived need to deter requests that would disrupt government operations.

Under the 1996 amendments, an institution shall conclude that a request is frivolous or vexatious if the head forms the opinion on reasonable grounds that:

- The request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
- The request is made in bad faith or for a purpose other than to obtain access.

Order M-850 assists in defining these criteria.

Since the introduction of this provision, the IPC has been collecting data showing the frequency with which this section is used. Contrary to the concern that institutions are being inundated with frivolous or vexatious requests, the numbers show the opposite. From 1996 to 1999, this provision was used by provincial institutions a total of 50 times in relation to a total of 37,774 provincial requests. Similarly, municipal institutions invoked this provision 90 times in relation to a total of 44,445 requests. In conjunction with IPC orders which further defined and clarified the application of the provision, the end result is that this provision is rarely used.

The data we have collected rebuts a common misperception that freedom of information processes are subject to a high degree of abuse by requesters. Ontario has certainly experienced requests which could be characterized as frivolous or vexatious. However, we are of the view that in most instances, a modest request fee alone should be sufficient to deter frivolous or vexatious requesters. To the extent that limits are necessary, they should be exercised with extreme caution and only as a last resort.

THE SCOPE OF THE ACT

Privatization and Alternate Service Delivery

The erosion of access rights has manifested itself in Ontario by the privatization of government agencies. One recent example is Ontario Hydro which, under Ontario's *Energy Competition Act, 1998*, was divided into five corporations. Two of these corporations were not scheduled as

institutions under the *Act*. Prior to this change, all of Ontario Hydro's operations were subject to the *Act*. Alternate service delivery, whereby institutions enter into arrangements to provide government services through a private sector contractor, also poses a threat to access rights.

The loss of jurisdiction through alternate service delivery has been diminished to a certain extent in Ontario by a court decision upholding access and privacy rights where such arrangements are made. *(Ontario Criminal Code Review Board v. Donald Hale, Inquiry Officer et al* [1999] O.J. No. 4072 (C.A.), affirming (March 7, 1977), Toronto Doc.283/95 (Div.Ct.).

Following this finding, the IPC recommended a government framework which would include the requirement for a written contract between the institution and private service provider explicitly maintaining the application of the *Acts* to records necessary for the performance of the service. Access, security and record retention are additional details to be specified in these contracts (See *1999 Annual Report*, page 12).

We are of the view that provisions governing the relationship between institutions and the private sector to this effect would assist in preventing further erosion of access rights due to privatization and alternate service delivery. We encourage the Task Force to consider statutory provisions or a framework of this nature.

Cabinet Records and Advice to Government

We note that over the years, there have been many detailed proposals to amend the provision governing Cabinet "confidences" at the federal level. A major concern is that Cabinet records are excluded from the scope of the federal *Act*. Until recently, the Privy Council Office (PCO) honoured a protocol by which it would obtain a certificate from the Clerk of the Privy Council attesting that the records were Cabinet confidences. Apparently, the PCO now claims that it has no obligation to provide this certification (*Annual Report Information Commissioner 1999-2000*). This is clearly unacceptable.

In Ontario, Cabinet records are addressed by a mandatory exemption (Section 12). On appeal and in accordance with established procedure, the IPC reviews records withheld under this section in order to determine whether they qualify for exemption as Cabinet records.

We are of the view that making Cabinet records an exemption would accord a higher level of scrutiny to this category of records.

The federal Information Commissioner has also noted that the discretionary exemption entitling institutions to withhold records that contain advice or recommendations to government, is an area "ripe for reform" (*Remarks to Conference on Access to Information Reform* by John Reid, Information Commissioner of Canada, May 1, 2000). Commissioner Reid explains that although section 21 of the federal *Act* is a discretionary exemption, there are no criteria set out in the statute for the exercise of that discretion. One approach he suggests is a list which sets out information that will not be covered by the exemption as in British Columbia and Ontario.

Although section 21 of the federal *Act* contains two exceptions, section 13(2) of Ontario's *Act* provides a more comprehensive list of 12 categories of records which do not qualify for exemption as advice or recommendations to government. These exceptions include: factual material, statistical surveys, environmental impact statements and various types of reports. In our experience, institutions have become increasingly aware of the need to consider the exception, and where necessary, to carefully sever records before applying section13.

One advantage of statutory exceptions is that they can serve to clearly define what falls outside a rule. We have found that subsection 13(2) of the *Act* provides guidance in applying section 13, and encourage the Task Force to consider a provision of this nature.

Injury-Based Exemptions

As the consultation paper notes, records can be exempted from disclosure on the basis of the type of information at issue (class test) or the possible harm or injury to a party that will result from disclosure (injury test).

In our experience, the *Acts* work more effectively in the context of injury-based exemptions. The establishment of harm requires a rigour that is consistent with the proper exercise of discretion. We have also found that appellants are more likely to accept the application of an exemption where injury or harms have been demonstrated as opposed to the application of class-based exemptions.

In our view, injury-based exemptions lend credibility to an access process and should be a driving factor in any new regime.

Public Interest Override

Question 4.2 in the consultation paper suggests that the federal *Act* provides for disclosure in the public interest only with respect to third party information.

In Ontario there are two instances where records can be disclosed due to overarching public interest considerations. The *Act* specifically requires a head to, despite any other provision, disclose any records if he or she has reasonable and probable grounds to believe that it is in the public interest to do so and that the records reveal a grave environmental, health or safety hazard to the public (Section 11).

Ontario's *Acts* also contain a "public interest override" (Section 23) allowing an institution to override the application of an exemption where there is a compelling public interest which outweighs the purpose of the exemption. The public interest override may be applied to a number of exemptions, including two that are mandatory – third party commercial interests, and an unjustified invasion of personal privacy (Sections 17 and 21). It may also be applied to advice to government (Section 13), showing a clear indication that in specific circumstances, even this exemption must give way to the public interest. Cabinet records, law enforcement records, records qualifying for solicitor-client privilege and records relating to the defence of Canada are the only provisions which cannot be overridden by this section.

Although the public interest override is frequently raised by requesters and appellants, the threshold for its application is very high and carefully applied on appeal. Each case turns on its own specific fact situation and the evidence put forward by the parties, particularly the appellant. A very small proportion of public interest override claims are upheld. Some examples of situations where this section has been applied to override an exemption claim are:

- where the actions of an elected public official were called into question, and irrespective of any actual wrongdoing, the public interest in disclosure clearly outweighed the purpose of the personal information exemption claim (Order M-710);

- where a serious computer security breach had been alleged, placing a sensitive section of an institution at risk, and the pubic interest in disclosure of all relevant facts outweighed the purpose of the personal information exemption claim as it related to the conduct of an identifiable individual (Order P-984);

- where records were created in the context of discussions dealing with the occupation of Ipperwash Provincial Park by a group of native people which resulted in the death of a protester, the public interest in disclosure of certain advice and recommendations to government outweighed the purpose of that exemption (Orders P-1363, P-1409 and P-1619).

The public interest override has also been applied to disclose records relating to the operation of nuclear facilities (Orders P-1190 and PO-1805) and records concerning the economic impact of Quebec separation on the economy of Ontario (Order P-1398).

It is important for any access scheme to provide government with the ability to consider the public interest when applying the legislation. Consideration of the public interest enhances the underlying principles of the *Act* and promotes open and accountable government.

OTHER INITIATIVES

Routine Disclosure/Active Dissemination

We note that the federal Information Commissioner has recommended a legislative amendment which requires the routine release of basic government information including a description of government organizations, activities, programs, as well as information which will assist the public in exercising their rights and obligations and understanding those of government (*Annual Report Information Commissioner 1998-1999*, Proposals 6 and 7). The IPC wholeheartedly endorses these proposals and suggests that these principles be extended to include other records that can be routinely disclosed or actively disseminated in the absence of formal access requests.

The IPC has been an advocate of routine disclosure and active dissemination practices for many years. Routine disclosure (RD) occurs when a request for a record can be granted routinely either inside or outside the formal access process. Active dissemination (AD) occurs when information or records are periodically released, in the absence of a request, pursuant to a specific strategy for release of information. RD/AD practices better serve the public and are labour-saving for institutions.

In addition to those categories of records noted above, the IPC encourages institutions to regularly identify records which lend themselves to RD/AD. Evaluative tools include reviewing request and disclosure trends on a regular basis to ascertain the types of records that are regularly requested and disclosed without exemption. Once identified, lists or indexes of RD/AD records enable staff to easily process requests

outside of the formal access process. We are pleased that increasing numbers of provincial and municipal institutions are embracing this practice (See: *Routine Disclosure/Active Dissemination: A Best Practice in the City of Mississauga; Enhancing Access to Information: RD/AD Success Stories* and *IPC Practices #22)*

We submit that the Task Force also consider the opportunity afforded to RD/AD initiatives by the use of electronic dissemination of government information. Some government offices have already begun using their Web sites as a tool for information dissemination. We are also of the view that RD/AD initiatives should be included in any federal e-government strategy.

Of particular interest are developments at the federal level in the United States. The U.S. *Electronic Freedom of Information Act Amendments of 1996* require government to make certain categories of information available, including on the Internet, without the need for access requests. In particular, the amendments require government organizations to provide an index to, and copies of, prior released *Freedom of Information Act* records that have been or will likely be the subject of additional requests. Such indexes must be available online in three years. Despite some concerns relating to the implementation of these amendments, they are nevertheless hailed by some as an enhancement to access (Statement of James Riccio, Staff Attorney, Public Citizen's Critical Mass Energy Project, before the Subcommittee on Government Management, Information and Technology, U.S. House of Representatives, June 9, 1998).

We encourage the Task Force to promote RD/AD strategies in any new federal access regime and to consider the contributions to this objective that the electronic dissemination of this information can make.

Compliance and Commitment

No matter how comprehensive an access scheme is, the failure of government institutions to comply with its provisions can undermine the legislation more than any other factor. We note the federal Information Commissioner's "Mayday" cries in his latest *Annual Report*, and urge the Task Force to give this matter priority.

One place to start is the legislation itself. Under section 72 of the current federal *Act*, there is a requirement that each institution provide an annual report to Parliament on the administration of the Act. Apparently, there has been some confusion about who should be responsible for analysing the data and reporting on trends. Although Treasury Board Secretariat tabulates some basic government-wide statistics regarding the operation of the *Act*, it has never reported on long-term trends or the relative

performance of institutions (*Monitoring Performance by Federal Agencies: A Tool for Enforcement of the Access to Information Act* by Alasdair Roberts, March 1999). Roberts suggests some procedural ways to address this issue, such as requiring institutions to post these reports on their Web sites. However, a legislative amendment which gives the federal Information Commissioner the power to collect compliance information directly from institutions and report on their performance, as does the IPC, would be of considerable assistance.

Although the federal Information Commissioner has the power to investigate matters on his own initiative, and has produced various Report Cards on the performance of federal institutions, an express power to undertake compliance audits and issue compliance directives, in our view, would provide clarity and an effective enforcement mechanism.

The IPC has undertaken some recent initiatives in an effort to enhance the request processing rate of provincial institutions. In 1999, for the first time, the IPC reported on the performance of individual provincial institutions. Good performers and poor performers were identified. Joint projects were undertaken with three Ministries which had the poorest request processing rate, and preliminary results show that some progress is being made.

In conjunction with this initiative, the Secretary of Cabinet has introduced freedom of information performance standard commitments in the performance contracts of Deputy Ministers.

The IPC has also entered into a protocol with the Ministry of the Attorney General which governs relations between counsel. This protocol reinforces respect for the *Act* and its underlying principles.

Joint publications have been undertaken with Management Board Secretariat and other institutions to provide guidelines to senior managers and Co-ordinators such as the *Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators Relating to Access to Information* as well as a *Freedom of Information Guideline*.

The IPC has also put forth the following recommendations to government:

- That freedom of information (FOI) response standards be part of the government's Quality Service initiative.
- That FOI should be identified as part of an institution's core business.
- That contentious or sensitive issues should not interfere with request processing.

- That decision-making under the legislation should be delegated to Co-ordinators.

- That Co-ordinators should hold management positions.

We also submit that there is the need to make access training at all levels of government a mandatory component of any new federal access scheme. Finally, there is an overwhelming need for government champions of freedom of information laws. Senior leadership at the federal level is urgently needed in this field.

In sum, ensuring compliance with freedom of information laws and a commitment to open government is a primary challenge for any access regime. This is an opportunity for the Task Force to try to build some of these measures into a new scheme.

CONCLUSION

It appears that the *Access to Information Act* was introduced with the underlying assumptions that goodwill and openness would underpin its operation. The current "Mayday" calls emanating from the federal Information Commissioner have indicated that this is not so, and with the exception of one amendment, all cries for legislative reform have gone unheeded. However, with the creation of this Task Force, there is room for optimism.

We urge the Task Force to seize this opportunity to recommend robust improvements to the federal access scheme. With a view to enhancing the Commissioner's powers, we support a redress model which includes, at a minimum, order-making power for deemed refusal complaints/appeals; the express authority for the Commissioner to undertake mediation and conduct research, education and receive representations from the public. Additional statutory tools such as express powers to collect compliance data from institutions and conduct audits would also enhance an access scheme.

We urge the Task Force to enhance the scope of the *Act* as well as the access process. Making cabinet records an exemption, introducing a comprehensive exception to a "government advice" exemption, using injury-based exemptions, and implementing a public interest override are just some examples of amendments that would strengthen the current federal access process. Fees should not be used as a barrier to access, and can indeed have that effect as Ontario citizens have experienced.

Privatization and alternate service delivery always pose a threat to existing access rights to government-held information. Although the new federal private sector legislation addresses privacy rights, it is silent on access matters. Hopefully the suggestions we have made in this area will be of assistance.

This is also an opportunity for the Task Force to embrace the benefits and challenges of an electronic world. By addressing the impact of technology on current access processes, the federal government can show some leadership in this area, particularly since many other jurisdictions are struggling with the impact of technology in the context of dated access legislation. The opportunity is ripe for the advancement of RD/AD initiatives and the use of technology in that regard.

Finally, we urge the Task Force to seize the opportunity to find ways to instil government commitment to the underlying principles of a new federal access scheme.

Thank you for the opportunity to submit our comments. We are available for further discussions or to answer any questions you may have.